

SERVED: February 1, 2002

NTSB Order No. EA-4939

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of January, 2002

_____)	
)	
In the matter of)	
)	
KEVIN W. DAISEY,)	Docket NA-37
)	
Petitioner-Appellant.)	
)	
_____)	

OPINION AND ORDER

By written decision served April 18, 2001,¹ Administrative Law Judge William E. Fowler, Jr., dismissed, on the Administrator's motion, a petition filed by the appellant that sought, among other things, Board review of the Administrator's withdrawal of petitioner's authority to serve as a check airman for Hawaiian Airlines in Boeing B-717 aircraft. The law judge concluded that the Administrator's motion to dismiss correctly demonstrated that the Board does not have jurisdiction over check airman authorizations. Because we agree with that conclusion, we

¹A copy of the order is attached.

will deny the petitioner's request that we reverse the law judge's decision.²

Appellant's appeal brief presents several arguments reflecting his disagreement, for mostly extraneous or insubstantial reasons, with the law judge's determination that the conferral or taking away of check airman authority lies beyond the scope of the Board's statutorily enumerated powers. Specifically, the law judge ruled that the withdrawal of check airman authority does not amount to the amendment, modification, suspension, or revocation of a certificate issued under 49 U.S.C. § 44709(b), which specifies the parameters of the Board's certificate action review role, but, instead, flows from separate authority that the Administrator possesses under Section 44702(d) both to delegate, in effect, some of her certification powers and to rescind any such delegation "at any time for any reason..."

In the absence of express authority to examine the validity of the discretion the Administrator exercises under Section 44702(d), it is of no legal consequence that there may be similarities between the privileges of or prerequisites for check airman authority and the authority conferred by an airman certificate, or that the loss of check airman authority may produce negative economic impact for a certificate holder.³ Such

²The Administrator has filed a reply brief opposing the appeal.

³This is not to say that the Administrator's exercise of discretion with respect to the designation or removal of check airmen authority is beyond review. It is simply not subject to review here. The process that is due an airman aggrieved by

circumstances do not alter a statutory scheme that does not contemplate Board review of challenges to decisions made under a provision that enables the Administrator to enlist private individuals to facilitate the administration of her licensing responsibilities.

Inasmuch as the appellant has established no error in the law judge's legal analysis of the pertinent law, we will adopt the law judge's decision as our own and deny the appeal.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied; and
2. The April 18, 2001 order of the law judge is affirmed.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)
losing such authority is a question for the courts.